

**FILED**

NOV 20 2007

1 David Mungai Njenga  
 2 1623 E. J. STREET, SUITE 5, D2  
 2 Tacoma, WASHINGTON 98421

DETAINED  
 PRO SE RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND

## 3 IN THE UNITED STATES DISTRICT COURT FOR THE

## 4 NORTHERN DISTRICT OF CALIFORNIA

## 5 AT OAKLAND

6 In the Matter of ) Case No:  
 7 David Mungai Njenga ) A# 91-73-8632  
 8 Petitioner, ) Emergency motion for humanitarian  
 9 v. ) release to enable petitioner see his  
 10 A Neil Clark, ) parents before they die and  
 11 Respondent. ) Petition For Bail Hearing  
 12 ) Pursuant To Kim v. Zigler  
 13 )  
 14 )  
 15 )  
 16 )  
 17 )  
 18 )  
 19 )

**MOTION**

14 Comes now petitioner David Mungai Njenga a detainee at  
 15 Northwest Detention Center at Tacoma, Washington proceeding  
 16 PRO SE and MOVES THIS court to recommend a bond hearing and in  
 17 support hereof I state,

18 1) I have six United States citizen children and my wife is a  
 19 citizen of the United States

20 2) I am willing to pay a reasonable bond and be on supervised  
 21 parole.

22 3) my mother who is a legal permanent resident is so seriously  
 23 sick and I would like to be able to visit her at the hospital.

24 4) I am not subject to any criminal prosecution for failure to  
 25 depart from the United States.

## PROCEDURAL HISTORY

- Petitioner entered United States on March 2<sup>nd</sup> 1979 when he fled Kenya for fear of being persecuted following the death of President Jomo Kenyatta and after being named in the change the constitution group.
- Petitioner was targeted for his political contribution (see book title changed the constitution. Upon entering, the United States petitioner wrote two books-my Daughter in Washington and child of two worlds, has co-authored Devil on the cross.
- Sometime in 1992, I applied for asylum withholding of removal convention against torture and deferral of removal.
- Sometime in 1993, I was convicted for misuse of social security number a crime involving moral turpitude and sentenced to six months imprisonment. The immigration judge administratively terminated the proceedings.
- Sometime in 1993 after serving the sentence the immigration judge reopened the asylum proceedings granted my release on a five thousand (5,000) bond. A series of hearings were conducted between 1993 and 1997 and I never failed to appear on any one time let the record show.
- Some in 1996 the immigration judge granted my brother john Mbitu asylum but continued my case for a new merits hearings after the tape recorder malfunctioned.

- 1     • On October 23<sup>rd</sup> 1997, I visited the state of Washington for a
- 2         business meeting as the president of sunset employment
- 3         services and to attend a funeral.
- 4     • On that material day, an argument occurred between petitioner
- 5         and one Mr. Joel Houston who was protesting his daughters
- 6         lay-off. Mr. Houston happened to be a Seattle police officer.
- 7     • Petitioner called 911 after he noticed that Mr. Houston had
- 8         a gun. Since Mr. Houston was, a police officer petitioner was
- 9         arrested on fabricated frivolous charges later turned in to
- 10         the former immigration and naturalization service detained
- 11         and denied access to communicate with his attorney later
- 12         notified that his \$ 5,000 bond has been revoked.
- 13     • Petitioner retained a local Seattle attorney for bond hearing
- 14         the immigration judge eventually granted petitioner bond in
- 15         the amount of \$ 50,000, which was tantamount to no bond as
- 16         it, was so high intended to prevent petitioner from posting
- 17         bond.
- 18     • Petitioner through counsel filed a timely appeal with the
- 19         board of immigration appeals, before the board could render
- 20         its decision on the reasonableness of such huge amount "by
- 21         some miracles" petitioner was bonded out arrested by the
- 22         Kenyan authorities and illegally repatriated to Kenya where
- 23         he was detained and tortured and at sometime reported as dead
- 24         by the Kenyan government. Petitioner was subjected to anal
- 25         rape with soda bottles and petitioners daughter sexually

raped in the presence of petitioner. Petitioner's daughter was 13 at the time of she was raped.

- Sometime in 1999 petitioner managed to return to the United States using a Congo passport, a driver's license and a work permit crossed the Mexican border.
- Sometime in June 2002, petitioner was again detained at Santa Rita county jail in alameda county California at the request of immigration and naturalization service.
- On august 5<sup>th</sup> 2002 I was transferred to Yuba county jail notified of my in absentia order of deportation.
- On august 15<sup>th</sup> 2002 I filed a pro-se motion to reopen my asylum proceedings presented my corroborating evidence, which included the death announcement video tapes from CNN affiliate KTN who had conducted a live interview, which was televised nationwide where I was referred as the DEAD MAN ALIVE. My daughter also submitted an affidavit in my support, the immigration judge denied the motion to reopen citing that the death announcement was not sufficient, as she could not tell how it relates to petitioner the immigration judge also denied the motion to reopen because my daughter failed to sign her affidavit. Under the Kenyan laws, a minor is not required to sign any documents although she can be sworn in to tell the truth. She was willing to testify in open court.

- 1     • On December 12<sup>th</sup> 2002, the immigration judge denied the motion
- 2         to reopen sent the denial order to the wrong address-
- 3         hindering petitioner from knowing of the denial order.
- 4     • On February 2002, I filed a lawsuit against the Kenyan
- 5         government served a copy to the Kenyan embassy in Washington
- 6         DC.
- 7     • Upon receipt of the notice of the lawsuit, the Kenyan embassy
- 8         hurriedly issued emergency travel documents to allow ICE to
- 9         effectuate my removal so I can be taken to Kenyan and be
- 10         killed. referring to comments by hon Raila Ondinga.
- 11     • On March 28<sup>th</sup> petitioner filed a habeas petition in this court
- 12         case # CO2-5892 SBA. see also interoffice memorandum.
- 13     • On august 2002 petitioner was arrested and detained at Santa
- 14         Rita county jail Alameda county then moved to Yuba county
- 15         jail then Oakland city jail then Kern county jail then to
- 16         Sacramento jail and back to Oakland city jail.
- 17     • On February 28<sup>th</sup> 2003 petitioner filed a petition for a writ
- 18         of habeas corpus with this court case number CO2 5892 SBA and
- 19         requested an emergency stay of removal.
- 20     • The court granted petitioner the stay and appointed counsel
- 21         to represent petitioner in the case.
- 22     • On April 2004, petitioners custody status was review and
- 23         granted release on bond of \$ 10,000 and ordered released
- 24         until such time that the case would be resolved (see attached

1 release order). Petitioner did not violate his release  
2 conditions or commit any crimes.

3 • On January 12<sup>th</sup> 2007 petitioner was arrested and detained by  
4 U.S. Immigration and Custom Enforcement (ICE) and detained at  
5 northwest detention center where he currently remains until  
6 present time.

7 • Petitioners bond obligor was never notified even requested to  
8 surrender the alien (petitioner as promised) (see attached.)

9 • Petitioner was told by the deportation officer that they  
10 arrested him because the case is pending at the ninth circuit  
11 and the court of appeals has granted stay of removal thus  
12 petitioner is being punished for seeking a judicial review.

13 • Petitioner challenges that arrest and detention without a  
14 bond as illegal unconstitutional and a violation of due  
15 process of the law.

16 • Petitioner has never been given an opportunity for a bond  
17 hearing he is detained without a bond.

18 **JURISDICTION.**

19 Petitioner is not sure which district court has the  
20 jurisdiction over this matter for the following  
21 reasons.

22 Petitioner is currently detained at northwest  
23 detention center Tacoma, on the other hand  
24 petitioners file still is in the jurisdiction of

1 sanfransisco immigration and all correspondence  
2 related to this case goes through sanfrancisco.  
3 Further petitioner case was heard by the San  
4 Francisco immigration judge who retains jurisdiction  
5 over this case.

6 Due to this confussion petitioner has also filed another  
7 petition with the western district of washington  
8 Petitioner's immigration case was held in San Francisco and the  
9 case manager in this case is located in San-Francisco  
10 immigration office. Further if petitioners request for bond  
11 hearing is granted the bond hearing will be conducted by the  
12 immigration judge in San Francisco who first heard the case  
13

14 **ARGUMENT**

15 Petitioner challenges his mandatory detention pursusuant to  
16 the immigration a naturalization act (INA § 236 ( C ), 8 U.S.C  
17 §1226 ( C ) which mandates his detention without bond.

18 Petitioner argues that the mandatory detention provision of  
19 INA § 236<sup>®</sup> should not be applied to him because his removal  
20 proceedings were initiated before the effective date of the  
21 statue, October 9<sup>th</sup> 1998 and § 1226<sup>®</sup> violates the due process and  
22 equal protection clauses of the Fifth Amendment. See Reno  
23 v. Flores, 507 U.S. 292, 306, 1231. Ed 1, 113 s.ct1439 (1993) CuiThon Ngo  
24 v. INS, 192F.3.d 390, 336 (3<sup>rd</sup> cir1999). It is well established that  
25 aliens have a right to due process under the Fifth Amendment.

1 Petitioner fundamental right to liberty is  
2 unconstitutionally abridged by the mandatory detention  
3 provision, see Fouch 504 U.S.71 at 80,112 s.ct 1780 118 L.Ed 2.d  
4 437(1992) (freedom from bodily restrain has always been at the  
5 core of the liberty protected by the due process clause) quoting  
6 Danh v.Demore,59 F.SUPP.2d 994,1001-5 (N.D.CAL1999) mandatory  
7 detention provision violates due process. See Vea Eaton  
8 V.Beebe,49 F.SUPP.2<sup>nd</sup> 1186,1190 (D.OR1999) (it) Martinez  
9 V.Greene,28 F.supp.2d 12775 1282-84 (D.COL 1998) .

10 Detention incidents to removal must bear a reasonable  
11 relation to this purpose. see Demore V.Kim,538I.S.510,527  
12 (2003)detention of aliens that was unquestionably removable  
13 where detention lasted on an average of 47 days is reasonably  
14 related to prevention of flight risk); see  
15 ZadvydasV.Davis,5333U,S.678,690 (U.S2001).recently, ninth circuit  
16 court of appeals has held that an alien is entitled to release  
17 from detention after having been detained for over six months  
18 because indefinite detention does not conform with the INAs  
19 mandatory detention provision and the prolonged detention period  
20 violates the aliens due process right to liberty.TijaniV.Willis  
21 430F.3d 1241(9<sup>th</sup> cir 2005) per opinion of Noonan ,circuit judge  
22 and opinion of Tashima,circuit judge concurring in  
23 judgment).lastly length of confinement violates the due process  
24 requirement of the constitution.id at 1249 (Tashima) .  
25 Concurring. Justice Tashima in his concurring opinion in Tijani

1 noted that ,there exists a point at which the length of  
2 detention becomes so egregious that it can no longer be said to  
3 be reasonably related to an alien's removal. Id at 1249. An  
4 uncontested stay of removal followed by prolonged  
5 administrative detention is inconsistent with due process of  
6 law.id at 1246.

7 After prolonged detention,Tijani requires the government to  
8 provide the petitioner with a hearing before an immigration  
9 judge where the government must establish that the alien is a  
10 flight risk or a threat to national security, and if not,  
11 entitlement to release pursuant to a writ of habeas corpus .id  
12 at 1242.

13 Furthermore ,the Supreme Court decision of Zadvydas  
14 provides additional support to petitioner's writ. In Zadvydas  
15 the Supreme Court held that the aliens cannot be subjected to  
16 indefinite detention pursuant to 8 U.S.C §1231(a) (6) , even if  
17 they are deemed to be unlikely to comply with the order of  
18 removal. See Zadvydas V.Davis,533 U.S.678(2001) omremand to  
19 257F.3d 1095(9<sup>th</sup> cir 2001). The Supreme Court held inZadvydas  
20 that an alien who has been ordered removed could not  
21 indefinitely be held past six months period unless their removal  
22 is reasonably foreseeable.id at 701.

23 Petitioner has been detained since 1997 with the exception  
24 of those temporary releases and it is highly that there will be  
25 an adjudication of the merits of his case within the next two to

1 three years. Pursuant to Zadvydas and Tijani petitioner should  
2 be given the opportunity to fight his case outside of detention  
3 and not pressured into relinquishing his claim due to prolonged  
4 indefinite detention that has now been imposed.

5 This habeas corpus proceedings under 28.U.S.\$2241 concerns  
6 the constitutionality of the prolonged detention of alien while  
7 he waits a decision from the united states court of appeals on  
8 his petition for review of a final order of removal.

9 Petitioner was released on bond and did not commit any  
10 crimes and did not violate release orders.

11 Petitioner further argues that he does not pose a risk of  
12 flight as the record will show he was release on own recognizance  
13 during criminal proceedings and after conviction was given the  
14 opportunity to self surrender and he complied with the order.

15 During asylum proceedings petitioner was always out on a \$  
16 5,000 attended all scheduled hearings until 1997 when  
17 miraculously was bonded out and prevented to attend his asylum  
18 hearings which resulted in the in absentia deportation order of  
19 1998.

20 On .....2007 a post order custody review of his status was  
21 undertaken by DHS/ICE. No personal interview of petitioner  
22 occurred with the connection with this custody review. Instead  
23 ,only a file review was undertaken. The deportation officer  
24 determined that detention should be continued because petitioner  
25 has refused to withdraw his petition from the ninth circuit,

1 which has issued a stay of removal. (see regulation promulgated  
2 at 8C.F.R4 241.4 explaining ;an alien who have filed a petition  
3 for review of an order of removal but has not received a stay of  
4 deportation is subject to the provision of 8USC 41231.detention  
5 beyond the removal period may be maintained only upon compliance  
6 with applicable process.

7 Prolonged detention raises substantial question of  
8 constitutional dimensions. deportable aliens ,even those who  
9 have already been ordered deported posses a substantive fifth  
10 amendment liberty interest quoting Ly V.Hansen,351 F.3d 263,269  
11 (6<sup>th</sup> cir 2003). Accordingly ,aliens under an order of removal are  
12 entitled to an opportunity to be heard on the question of  
13 prolonged detention and they may be kept locked up only if  
14 incarceration is justified as was recognized in Ngo v. I.N.S 192  
15 F.3d 390 397 (3<sup>rd</sup> cir 1999) .

16 Regulations for parole have also been promulgated where a  
17 criminal alien is held beyond the removalperiod.see 8 C.F.R  
18 §241.4. However, neither regulation nor statute clearly covers  
19 an alien subject to final removal order but whom the removal  
20 period has been suspended by stay of removal. In Abubukar v  
21 Ashcroft ,2004 U.S.dist Lexis 5998, # A 01-242,2004 WL 741759,at  
22 3.(D.Minn.march 17<sup>th</sup> 2004 (rejecting as untenable the argument  
23 that the alien had a

24 ,circuit judge and without a bond hearing which  
25 violates the fundamental right to liberty. See Fouch 504 U.S. 71

1 at 80 112 S. ct 1780, 118 L. Ed 2.d 437 (1992) "Freedom from  
2 bodily restraint has always been at the core of the liberty  
3 protected by Due process clause" quoting Danh v. Demore, 59 F.  
4 Supp. 2d 994, 1001-5 (N.D) (cal 1999). Detention with bond or  
5 bond hearing is unconstitutional. See Kim v. Zigler.

6 It also violation Due process quoting Vea Eaton v. Beebe,  
7 49 F. Supp 2<sup>nd</sup> cir 1186 1190 (1999). Martinez v. Greene, 28  
8 F.Supp 2<sup>nd</sup> 1275, 1282-84 (D-Col 1998).

9 Prolonged detention period violates the aliens Due process  
10 rights to liberty. Tijani v. Willis, 430 F.3d 1241 (9<sup>th</sup> cir 2005).  
11 It also violates the Due process requirement of the constitution.

12 As justice, Tashima in his concurring opinion in Tijani  
13 noted, "there exist a point at which the length of detention  
14 becomes so egregious that it can no longer be said to be  
15 reasonably related to an alien removal."

16 After prolonged detention, Tijani requires the Government to  
17 provide the petitioner with a hearing before an Immigration Judge  
18 where the Government must establish that the Alien is a flight  
19 risk or a threat to the national security and if not the alien  
20 should be released on a reasonable bond.

21 Furthermore, the Supreme Court decision in Davis v.  
22 Zadvydas, the Supreme Court held that, the alien cannot be  
23 subject to indefinite detention pursuant to 8 U.S.C. 1231 (a)  
24 (6). See Zadvydas v. Davis, 533 U.S. 678 (U.S. 2001) on remand to  
25 257 F.3d 1095 (9th cir2001).

1 Petitioner has been detained altogether almost five years  
2 and it is highly that there will be no adjudication of the merits  
3 of his case within the next one to three years the review before  
4 the ninth circuit can take up to four years.

5 Petitioner should be given an opportunity before an  
6 Immigration Judge for a bond hearing.

7 On May 2007 a custody review was conducted by Department of  
8 homeland security/U.S. Immigration and Customs Enforcement and no  
9 personal interview was ever held instead only a file review was  
10 undertaken.

11 The reviewing officer and the district director determined  
12 that detention will be continued pending resolution of the case  
13 by the U.S. Court of Appeal for the Ninth Circuit. See exhibit  
14 (1).

15 Regulation promulgated at 8 U.S.C. § 241 states " An alien  
16 who has filed petition for review of an order of removal but who  
17 have not received a stay of deportation is subject to provision  
18 of 8 U.S.C. § 1231." Detention beyond the removal period may be  
19 maintained only upon compliance with applicable process.

20 Deportable Aliens, even those who have already been ordered  
21 removed, posses a substantive Fifth Amendment liberty interest.  
22 Ly v. Hansen, 351 F.3d 263, 269 (6th cir 2003). Accordingly,  
23 aliens under an order of removal are entitled to an opportunity  
24 to be heard.

25

1       The price of seeking justice under the law should not be  
2 unnecessary incarceration. Section 241 (a) (1) (c) contemplates  
3 action not taken in good faith by the alien, does not encompass  
4 action taken by the alien to obtain judicial review of cognizable  
5 claim.

6       Petitioner argues that the price of securing a judicial  
7 review should not be a path for denial of Due process.

8       Petitioner argues that he SHOULD NOT be effectively punished  
9 and made to suffer psychological and economical hardship, which  
10 will drag its effect on petitioner as well as petitioners united  
11 states family for years to come for pursuing applicable legal  
12 remedies. As remarked in Ly, 351 F.3d at 279 an alien who would  
13 not normally be subject to indefinite detention cannot be so  
14 detained mainly because he seeks to explore avenues of relief  
15 that the law makes available to him, further although an alien  
16 may be responsible for seeking relief, he is not responsible for  
17 time that such determination may take. Freedom from IMPRISONMENT  
18 from Government, custody, detention, or other, forms of physical  
19 restrain-lies at the heart of the liberty that the Fifth  
20 Amendments Due process clause protects.

21       The risk of flight is non existence where an alien is  
22 seeking to have legal status in the United States.

23       The court of Appeals indicated that custody decision based  
24 solely on a file review without any opportunity to be heard in  
25 person is inadequate Ngo, 192 F.3d at 398.

1 Petitioner in this case has strong family ties and entire  
2 family resides in the Washington State and California bay area.

3 Petitioner did not violate any laws while out on bond and  
4 order of supervised release; he does not have any disciplinary  
5 infraction or incident report while in custody.

6 Petitioner argues that agency decision failure to provide  
7 thorough and genuinely individualized hearings of bond  
8 applications as they systematically exaggerate the risk factors  
9 as quoted in Cabrera- Rojas, 999 F.Supp at 497.

10 The U.S. Court of Appeals for the Third Circuit held that  
11 mandatory detention of aliens violates their Due process right  
12 unless they have been afforded the opportunity for an  
13 individualized hearing addressing the necessity of detention.  
14 Patel 257, F.3d at 314. Petitioners have not been given such an  
15 individualized hearing.

16 Most justices have reached the conclusion in cases  
17 challenging the mandatory detention under 1226 (c) 241 of alien  
18 pending the outcome of removal proceeding. See Sharma v.  
19 Ashcroft, 158 F.Supp. 2d 524, 519 (Ed PA. 2001) U.S. v. Elwood,  
20 2002 U.S. Dist. Lexis 15742 2001 WL 1167541 (ED. PA 2001) Dean v.  
21 Ashcroft 176 F.Supp 2d 316 (DNJ 2001) Juarez ED 200. Chukwuezi v.  
22 Reno, 2000 U.S. Dist. Lexis 15432 2000. They all stated "**We hold**  
23 **that mandatory detention of aliens after they have been found**  
24 **subject to removal but have not been yet ordered removed because**  
25 **they are pursuing their administrative remedies violates their**

1 Due process right unless they have been afforded the opportunity  
2 for an individualized hearing at which they can show that they do  
3 not pose a flight risk or danger to community".

4 The fundamental requirement of Due process is the  
5 opportunity to be heard at a meaningful time and meaningful  
6 manner quoting Mathews v. Eldridge..., 424 U.S. 319, 333, 47 L  
7 Ed. 2d 18, 96 S. ct 893 (1976). Armstrong v. Manzo, 380 U.S. 545  
8 552, 14 L. Ed 2d 62 85 S. ct 1187 (1965). United States v.  
9 Salermo, 481 U.S. 739, 746 98 L. Ed 2d 697, 107 S. ct 2095  
10 (1987). Even civil confinement of alien must be limited both with  
11 respect to the length of detention Id at 690, as well as to the  
12 underlying purpose justifying the detention.

13 Petitioner has submitted his opening brief to the U.S. Court  
14 of Appeals for the Ninth Circuit.

15 Petitioner filed for a writ of habeas corpus in the western  
16 district of Washington petitioner has since learned that his  
17 immigration jurisdiction lies in the San-Francisco office.

18 **PRAYER FOR RELIEF**

19 Petitioner is about to lose his parents due to  
20 illness actually the record will show that  
21 petitioner has contributed his last dollar  
22 towards the hospital bill of mother and would  
23 like to be there for during her last days.

24 Wherefore, petitioner respectfully requests this court to  
25 issue an order, order Department of Homeland Security, / U.S.

1 Immigration and Customs enforcement (DHS) / (ICE) to grant  
2 petitioner a bond hearing before an Immigration Judge within (7)  
3 Seven days or in the alternative reinstate the original bond of  
4 Five thousands U.S. Dollars (\$5,000) U.S. Dollars.

5 2) .Appoint counsel to represent petitioner in this matter so it  
6 can be resolved amicably.

7 3.) This court has the authority to order release with or without  
8 posting of bond where justice will be served.

9

10

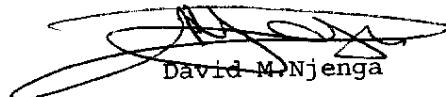
11

12 Respectfully Submitted

13

14

15 Dated this 30<sup>th</sup> day of October 2007

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David M. Njenga

PRO SE

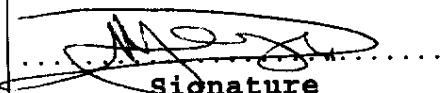
**PROOF OF SERVICE**

**On this day, I David .M.Njenga a detainee and a party  
to this cause certify that a copy of this petition was  
mailed first class postage paid**

1 To The Office of District Counsel.  
2  
3

4 At The Following 1000 SECOND AVENUE SUITE 2900  
5  
6  
7 SEATTLE WA 98101

8  
9  
10 By: First Class Mail Postage paid mail, which was then  
11 sealed and given to the Custody Officer, which is  
12 considered properly served.

13 .....  
14   
Signature

10-30-07  
15 .....  
16 Date

## BOND OBLIGOR RESPONSIBILITIES

1. You must be able to present the Subject to an officer of this Service each and every time a demand is made of you.
2. Each demand will be made either by personal service or via certified mail, return receipt. You should always keep this Service advised of your current address.
3. The bond will remain in effect until the case is resolved. This means until the Subject is found to be legal in the United States or until a legal departure is verified.
4. When the case is resolved, you will be notified by mail to return your original bond receipt for cancellation and return of your money.
5. This Service does not keep your money. It is held in the United States Treasury receiving interest. Your money will be returned to you in the form of a United States Treasury check.
6. It will take at least 6 to 8 weeks after your receipt is returned properly for you to receive the check.
7. If you fail to receive notice and/or fail to surrender the Subject on demand, you will forfeit the bond.
8. Your receipt should be kept in a safe place. The original receipt is required for the return of your money.
9. If you have any questions about this case, always remember to include the Subject's file number in your inquiry.
10. If you ever have reason to believe you are not going to be able to guarantee the Subject's delivery to this Service upon our demand, you may have your bond cancelled by returning the Subject to the custody of this Service.

REMEMBER TO ALWAYS KEEP THIS SERVICE ADVISED OF YOUR CURRENT ADDRESS. MAIL RETURNED AS "UNDELIVERABLE" DOES NOT RELIEVE YOU OF YOUR OBLIGATION(S).

I have read and understand the above responsibilities.

Signature Elizabeth Njenga Date    
Obligor  
Alien David munagi Njenga AF # 91-738-632

## Washington



**American dream:** Tam Tran, right, whose family was arrested, seen during May hearings on the DREAM Act with from left, Martine Mwanj Kalaw, Rep. Zoe Lofgren, Marie Nazareth Gonzalez, Rep. Lucille Roybal-Allard.

# Immigrant's family detained after daughter speaks out

By Kathy Kiely  
USA TODAY

WASHINGTON — Three days after a 24-year-old college graduate spoke out on her immigration plight in USA TODAY, U.S. agents arrested her family — including her father, a Vietnamese man who once was confined to a "re-education" camp in his home country for anti-communist activities.

Rep. Zoe Lofgren, D-Calif., who chairs the House immigration subcommittee, on Tuesday accused federal officials of "witness intimidation" for staging a pre-dawn raid on the home of Tuan Ngoc Tran.

The agents arrested Tran, his wife and son, charging them with being fugitives from justice even though the family's attorneys said the Trans have been reporting to immigration officials annually to obtain work permits.

Lofgren said she believes the family was targeted because Tran's eldest child, Tam Tran, testified before Lofgren's panel earlier this spring in support of legislation that would help the children of illegal immigrants. On Oct. 8, Tam Tran was quoted in USA TODAY. Her parents and brother were taken into custody Thursday. The family was released to house arrest after Lofgren intervened.

"Would she and her family have been arrested if she hadn't spoken

out?" Lofgren said of Tran, who was not at home for the raid but has been asked to report to Immigration and Customs officials next week. "I don't think so."

Kelly Nantel, a spokeswoman for U.S. Immigration and Customs Enforcement, said the Tran family's arrest "absolutely, unequivocally had nothing to do" with Tam Tran's advocacy. She said ICE agents began working on the case Sept. 28 and will now try to send the family to Germany, where the Trans lived for several years before coming to the United States. In the past, the German government refused the family's permission to return; Nantel said the U.S. government will now make an official request.

The raid marked the latest chapter in the Tran family's complex immigration odyssey. The family arrived in the USA 18 years ago from Germany, where the elder Trans ended up after the German navy rescued them at sea when they were escaping Vietnam.

Both Tam Tran and her brother, Thien, 21, were born in Germany, but they have lived in the USA since they were young. Tam Tran received a bachelor's degree with honors in American literature and culture in December from UCLA.

She has lobbied for the DREAM Act, which would give children of illegal immigrants a chance to obtain citizenship and a high

school degree and complete two years of postsecondary education or two years of military service.

In 2001, the Board of Immigration Appeals said the Tran family could not be deported to Vietnam because Tam's father had been persecuted there for his political beliefs. The board left open the possibility that the family could be sent to Germany, but U.S. immigration authorities wouldn't give them a visa.

Nantel said there are more than 324,000 people living in the USA who have been lawfully deported but who can't be sent away because no country will accept them. It's ICE's job to find a way to effect the judge's order," he said.

Bo Cooper, a Washington-based immigration attorney who this week agreed to take the Tran family's case free of charge, said he's puzzled that "the U.S. government would go and try to deport someone who already has a criminal record and has been given formal protection" because of his treatment as a political refugee in Vietnam.

None of the women in the Tran family has ever been to the U.S. Immigration and Customs Enforcement office, and they don't know why the agents came to their home. They have not been charged, but they have been detained, said Lofgren. The family is represented by the American Civil Liberties Union, which has filed a complaint with ICE.

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